

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Richard R. Rabbat et al.
Serial No: 10/759,698
Date Filed: January 15, 2004
Group Art Unit: 2619
Examiner: Andrew W. Chriss
Confirmation No. 8438
Title: TIME CONSTRAINED FAILURE RECOVERY IN
COMMUNICATION NETWORKS

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. The Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

Applicants request review of the rejections to the Application outstanding in the Final Office Action transmitted January 2, 2008 ("*Office Action*") and the Advisory Action dated March 21, 2008 ("*Advisory Action*"). Claims 1-33 are pending in the Application and are all rejected. Applicants respectfully request review of the rejections under 35 U.S.C. §§ 102, 103, and 112 and favorable action in this case. As the rejections contain clear deficiencies, Applicants respectfully request a finding of allowance of Claims 1-33.

I. Rejections Under 35 U.S.C. § 112

The Examiner rejects Claims 12-22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that "[t]he claimed computer readable medium was not described in the original disclosure and, as such, constitutes new matter." *Office Action*, p. 2. However, the specification as originally filed explicitly contemplated computer readable media. On page 11, the specification as originally filed describes that "some or all of the functionalities of node 12 may be performed by logic encoded in media, such as software and/or programmed logic devices." Despite this, the Examiner, in the *Advisory Action*, continues to assert that the specification does not provide explicit support for computer readable media, arguing that software may be printed on a sheet of paper so as not to be computer readable. While software printed on paper may in fact still be computer readable, that is not the point. One of ordinary skill in the art would easily understand that "logic encoded in media, such as software," explicitly contemplates computer readable media. Thus the specification as originally filed explicitly describes computer readable media. Accordingly, the amendments to Claims 12-22 do not introduce new matter. Applicants respectfully submit that the rejection of these claims contains clear factual and legal deficiencies.

II. 35 U.S.C. §102 Rejections

The *Office Action* rejects Claims 1, 8, 9, 12, 19, 20, 23, 30, and 31 under 35 U.S.C. § 102 (e) as anticipated by U.S. Publication No. US2004/0111651 to Mukherjee, et al. ("*Mukherjee*"). Applicants respectfully submit that *Mukherjee* does not describe, expressly or inherently, each and every limitation of the claims.

Consider Applicants' independent Claim 1, which recites:

A method for provisioning protection paths comprising:

- determining network configuration information for a network formed by a plurality of nodes;
- identifying a working path from a source node to a destination node spanning one or more intermediate nodes, wherein the source node, the destination node, and the intermediate nodes are all nodes in the network;
- determining a timing constraint for failure recovery;
- identifying potential nodes in the network that satisfy the timing constraint based on the network configuration information;
- selecting a protection path from the source node to the destination node spanning a second set of one or more intermediate nodes, the second intermediate nodes selected from the potential nodes; and
- setting up the protection path.

Among other aspects, *Mukherjee* fails to disclose both “identifying potential nodes in the network that satisfy the timing constraint” and “selecting a protection path . . . spanning a second set of one or more intermediate nodes, the second intermediate nodes selected from the potential nodes,” as Claim 1 requires.

As teaching these claimed aspects, the Examiner points to *Mukherjee*, paragraph 54. *Office Action*, p. 5. The cited portion of the reference states:

Next, the system calculates a chain of restorable cycles within the WDM network that guarantee the stated failure-recovery time (step 604). This calculation involves repeatedly selecting a link or series of links for a primary path, and then attempting to find a link or a series of links to form a backup path, which guarantees the stated failure-recovery time. Finally, the system selects a section of each restorable cycle as the primary path between the source and destination (step 606).

Mukherjee, ¶ 54, ll. 7-14.

This cited section of *Mukherjee* discloses an iterative process for identifying cycles in a network. Nothing in this cited section (or anywhere else in *Mukherjee*) describes identifying potential nodes that satisfy a timing constraint based on pre-determined network configuration information. Further, nothing in *Mukherjee* describes selecting a protection path from these identified potential nodes. *Mukherjee* cannot sustain a § 102 rejection of Claim 1. Independent Claims 12 and 23 include limitations that, for substantially similar reasons, are not taught by *Mukherjee*. Because *Mukherjee* does not disclose, expressly or inherently, every element of independent Claims 1, 12, and 23, Applicants respectfully submit that the rejection of Claims 1, 12, and 23 and their respective dependent claims contains clear factual and legal deficiencies.

III. 35 U.S.C. §103 Rejections

None of the other cited references remedy the deficiencies of *Mukherjee*. Accordingly, if the rejection under § 102 fails, then all rejections fail. Applicants thus respectfully submit that the rejections under § 103 contain clear factual and legal deficiencies for the reasons discussed above in Section II of this Request.

CONCLUSION

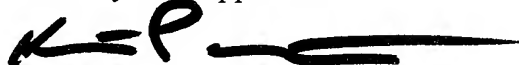
As the rejections of Claims contain clear deficiencies, Applicants respectfully request a finding of allowance of 1-33. If the PTO deems that an interview is appropriate, Applicants would appreciate the opportunity for such an interview.

Although no fees are believed to be due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

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Date: April 2, 2008

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